

United States of America

v.

12cr934(RA)

**Shufeng Xia
Defendant**

Letter Motion to Renew the 2255 Motion

C/O [REDACTED]

Email: [REDACTED]

Tel. [REDACTED]

Your Honor,

My name is Shufeng Xia. I am currently serving my sentence at a jail in Pennsylvania. Last month, I received a document from the immigration authorities telling me that there is a deportation order against me because my sentence is over one year and is aggravated felony. I am facing mandatory deportation to China after my sentence is fully served on August 23, 2015 and I can never return to the United States. My wife is a U.S. citizen. My younger daughter is also a U.S. citizen. My older daughter is applying for U.S. citizenship. My two daughters are both attending school and I am the primary source of my family's income and spiritual support. My wife and two daughters completely count on me for support. If I am sent back to China by the immigration authorities, my poor family will become even worse. In China we lived in the rural area and the living conditions are very poor. My daughters and my wife are my whole life. If I am forced to separate from my family, my family is in the United States and cannot often come to China to see me and I cannot come to the United States to live with them, the second half of my life will be very lonely and a very hard life to live.

I made a 2255 motion before to Your Honor but Your Honor said that my motion will be considered after my appeal is over. Later I learned that according to the legal procedure, my appeal will take at least nine months or longer to have a result. Thus, when the appeal result comes out, I will have already served my sentence and have been forced to be deported back to China and my appeal will be meaningless. I requested to withdraw my appeal and the appeal court approved my request. Now I request to come back to this court and to renew my 2255 motion. Because of my lawyer's mistake, when Your Honor sentenced me, my lawyer failed to explain in detail the severe consequence of mandatory deportation to China if my sentence is more than one year. As a result, the court did not consider the mandatory deportation consequence of the sentence. In sentencing my co-defendants Rui Yang and Guo Qin Miao, Your Honor said that their criminal conduct is more severe than me, but because of the deportation consequence caused by the sentence, Your Honor sentenced them leniently and their sentences are less than one year. But in sentencing me, the court did not consider the mandatory deportation consequence caused by the sentence and sentenced me for more than one year. I beg Your Honor through this 2255 motion to reduce my sentence so that I can stay in the United States and live with my family and avoid separation from my family.

Before, I knew what I did was wrong but I decided to stay because I did not know the true nature of what I was doing. I only had middle school education and did not know English and did not know the law and did not know the consequence is so severe. Had I known the consequences early, I would definitely not stay and continue the crime. Now I am very regretted for what I did before and I hate myself for doing it. I promise to Your Honor that I will forever obey the law from now on. Since I broke the law I should take the responsibility and I am willing to face the punishment. But the consequence of my current sentence is too cruel to me. I believe deporting me to China after I have served my sentence and separating me from my family forever is not what Your Honor wanted in sentencing me. In fact, I have already been punished because of my crime --- I am the oldest son in my family but in 2013 when both my parents were ill and hospitalized and

when my dear mother passed away in April 2014 I could not go back to visit them and attend my mother's funeral. I will regret and feel guilty for the rest of my life. I beg Your Honor to have mercy to me and consider this is my first time to break the law and give me an opportunity by reducing my sentence, so that I can stay in the United States to live with my wife and daughters. I solemnly promise to Your Honor I will not break the law for the rest of my life.

Thank You, Your Honor.

Sincerely,

Shufeng Xia

December 11, 2014

尊敬的法官大人：

我叫夏书峰，我正在宾州的监狱服刑。上个月我收到了移民局的文件，显示我有一个驱逐令^(因我的刑期超过一年是重罪)我已面临在2015年8月23日刑满后被移民局强制遣返中国的绝境，而且永远也不能再回国。

我的太太是美国公民，小女儿也是美国公民，大女儿也正递交入籍申请。两个女儿都在校读书，我是我们家主要的经济来源和精神支柱。是我太太和女儿可依靠的脊梁，如果我被移民局强制送回中国，我本清贫的家庭将更加困苦。在中国，我生活在农村，生存条件差。女儿和太太是我的一切，是我生命的全部，一旦被迫分离，我的家人在美国，不能经常回中国团聚，我又不能和美国和她们共同生活，那么我的后半生也将会孤苦无依，无法生活下去。

我之前曾向法官大人申请做“2255”的动议，但您回复我要我等到上诉有结果之后再考虑“2255”动议，后来我得知按司法程序，我的上诉有结果最早也须九个月或许更久，等结果出来时，我已服刑期满，被移民局强制遣返回中国，也就失去了上诉的意议。我已撤销上诉并已获上诉法院批准。我现在请求重回到法庭，做“2255”动议。

因为我的前律师的一些错误，在法官大人给我量刑时也没详细阐述给我判刑超过一年会被遣返中国这样严重后果，导致法庭当时没予考虑遣返的问题。法官大人后在判同案的杨瑞、苗国芹时提到她们犯的罪较我还严重，但考虑到移民遣返问题产生的后果，从轻判决，她们都没被判超过一年刑期，而之前对我量刑时是没考虑到遣返后果，判我超过一年的刑期，恳求法官大人通过“2255”动议，

给我减刑，能让我留在美国，同我家人一起生活，不至骨肉分离。

从前我之所以知道^{让我}所做^错的事不对还要做，是因为我认识不够，只有初中文化，不懂英文又没受正确、专业的法律知识培训，不知道有这样严重的后果而触犯法律，否则也早都不做了。我现在非常痛恨和后悔我之前做的事情，也保证能在以后永远守法；犯了错就要承担责任，接受惩罚，我也愿意接受，但现在的刑期产生的后果对我实在是太残酷了，我想，在我的刑期结束后被遣返中国，让我和我的家人一辈子痛苦分离，也不是法官大人惩罚我犯罪的本意。事实上我也因为这件事受到了惩罚——我身为家中长子，但在2013年我父母先后因病住院以及2014年4月我母慈母病世，我都不能回国探视和参加母亲的丧葬，而留下我终生遗憾和愧疚。再求法官大人网开一面，念我是初次犯罪，给我一个机会，给我酌情减刑，让我能留在美国和我妻子和女儿在一起。我郑重保证，在我有生之年，永远不在做违犯法律的事。

谢谢！

夏书峰

12/11/2014

MANDATE

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 10th day of December, two thousand and fourteen.

United States of America,

Appellee,

v.

Shu Feng Xia,

Defendant-Appellant.

ORDER

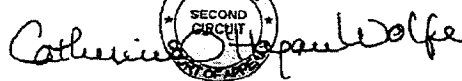

Docket No. 14-3104

Appellant Shu Feng Xia moves to withdraw his appeal pursuant to FRAP 42(b).

IT IS HEREBY ORDERED that the motion is GRANTED.

FOR THE COURT:

Catherine O'Hagan Wolfe,
Clerk of Court

A True Copy

Catherine O'Hagan Wolfe, Clerk

United States Court of Appeals, Second Circuit




MANDATE ISSUED ON 12/10/2014

DEPARTMENT OF HOMELAND SECURITY
IMMIGRATION DETAINER - NOTICE OF ACTION

Subject ID: [REDACTED]
 Event #: [REDACTED]

File No: [REDACTED]
 Date: October 14, 2014

TO: (Name and Title of Institution - OR Any Subsequent Law Enforcement Agency)
 MOSHANNON VALLEY CORRECTI
 555 GEO Drive
 PHILIPSBURG, PA 16866

FROM: (Department of Homeland Security Office Address)
 DRO - Allenwood, PA Sub Office
 ICE
 ERO ALLENWOOD SUB OFFICE
 ROUTE 15 N FCC
 ALLENWOOD, PA 17810

MAINTAIN CUSTODY OF ALIEN FOR A PERIOD NOT TO EXCEED 48 HOURS

Name of Alien: XIA, SHU FENG

Date of Birth: 05/21/1967 Nationality: CHINA, PEOPLES REPUBLIC OF Sex: M

THE U.S. DEPARTMENT OF HOMELAND SECURITY (DHS) HAS TAKEN THE FOLLOWING ACTION RELATED TO THE PERSON IDENTIFIED ABOVE, CURRENTLY IN YOUR CUSTODY: BOP #: 67791-054

☐ Determined that there is reason to believe the individual is an alien subject to removal from the United States. The individual (check all that apply):

- ☐ has a prior a felony conviction or has been charged with a felony offense;
☐ has three or more prior misdemeanor convictions;
☐ has a prior misdemeanor conviction or has been charged with a misdemeanor for an offense that involves violence, threats, or assaults; sexual abuse or exploitation; driving under the influence of alcohol or a controlled substance; unlawful flight from the scene of an accident; the unlawful possession or use of a firearm or other deadly weapon, the distribution or trafficking of a controlled substance; or other significant threat to public safety;
☐ has been convicted of illegal entry pursuant to 8 U.S.C. § 1325;
☐ has illegally re-entered the country after a previous removal or return;
☐ has been found by an immigration officer or an immigration judge to have knowingly committed immigration fraud;
☐ otherwise poses a significant risk to national security, border security, or public safety; and/or
☐ other (specify): _____

☐ Initiated removal proceedings and served a Notice to Appear or other charging document. A copy of the charging document is attached and was served on _____ (date).

☐ Served a warrant of arrest for removal proceedings. A copy of the warrant is attached and was served on _____ (date).

☐ Obtained an order of deportation or removal from the United States for this person.

This action does not limit your discretion to make decisions related to this person's custody classification, work, quarter assignments, or other matters. DHS discourages dismissing criminal charges based on the existence of a detainer.

IT IS REQUESTED THAT YOU:

☒ Maintain custody of the subject for a period **NOT TO EXCEED 48 HOURS**, excluding Saturdays, Sundays, and holidays, beyond the time when the subject would have otherwise been released from your custody to allow DHS to take custody of the subject. This request derives from federal regulation 8 C.F.R. § 287.7. For purposes of this immigration detainer, **you are not authorized to hold the subject beyond these 48 hours**. As early as possible prior to the time you otherwise would release the subject, please notify DHS by calling 570-547-6903 during business hours or _____ after hours or in an emergency. If you cannot reach a DHS Official at these numbers, please contact the ICE Law Enforcement Support Center in Burlington, Vermont at: (802) 872-6020.

☒ Provide a copy to the subject of this detainer.

☒ Notify this office of the time of release at least 30 days prior to release or as far in advance as possible.

☒ Notify this office in the event of the inmate's death, hospitalization or transfer to another institution.

☐ Consider this request for a detainer operative only upon the subject's conviction.

☐ Cancel the detainer previously placed by this Office on _____ (date).

E 3444 DEJESUS - SDDO

(Name and title of Immigration Officer)

(Signature of Immigration Officer)

TO BE COMPLETED BY THE LAW ENFORCEMENT AGENCY CURRENTLY HOLDING THE SUBJECT OF THIS NOTICE:

Please provide the information below, sign, and return to DHS using the envelope enclosed for your convenience or by faxing a copy to _____. You should maintain a copy for your own records so you may track the case and not hold the subject beyond the 48-hour period.

Local Booking/Inmate #: _____ Latest criminal charge/conviction: _____ (date) Estimated release: _____ (date)

Last criminal charge/conviction: _____

Notice: Once in our custody, the subject of this detainer may be removed from the United States. If the individual may be the victim of a crime, or if you want this individual to remain in the United States for prosecution or other law enforcement purposes, including acting as a witness, please notify the ICE Law Enforcement Support Center at (802) 872-6020.

(Name and title of Officer)

(Signature of Officer)